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MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1973

No. 73-1109

JESUS CANALES, et al.,

Petitioners,

vs.

CITY OF ALVISO AND CITY OF SAN JOSE,

Respondents.

Motion of Alviso Ad Hoc Committee for Leave to File a Brief Amicus Curiae in Support of Petition for Certiorari

DELIZONNA, BOURHIS & BOURHIS,
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SPARTAN PRINTING CO., INC., SAN JOSE, CALIFORNIA

In the

Supreme Court of the United States

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The Alviso Ad Hoc Committee is a nonpartisan unincorporated association with membership consisting almost entirely of residents of and voters in the City of Alviso, California. It is engaged solely in the defense of the basic legal rights and interests of Alviso residents, qua residents, and especially those many City residents of Mexican ancestry. During its existence it has been particularly concerned with preserv-

ing fundamental democratic standards for the expression of popular will by Alviso residents in elections to determine whether the City of Alviso shall consolidate with the City of San Jose.

Resultantly, the Alviso Ad Hoc Committee is no less concerned that certain requirements of California Elections Code Section 20024 are unconstitutional on their face and as applied insofar as they place a constitutionally impermissible and logically impossible burden on election contestants, Petitioners herein. Such requirements compel Petitioners to establish not only that illegal votes were cast in the election at issue, and that such votes were cast in a number equal to or exceeding the differential between "yes" votes and "no" votes, but to prove that such votes actually determined the election.

The *amicus* brief of the Alviso Ad Hoc Committee in support of *Petition for Certiorari* raises two issues in the question presented before this Honorable Court. The first issue raised is whether, in an election contest won by a number of votes equalled or exceeded by the number of illegal votes cast therein, the burden placed on contestants under California Elections Code Section 20024 to prove that illegal votes actually determined the election violates the Fourteenth Amendment of the United States Constitution where the Court did not purge the polls but rather based its finding that contestants failed to meet their proof burden on mere circumstantial evidence.

The second issue is whether the right to vote is a fundamental constitutional right which therefore requires an independent review of the trial court's find-

ings by appellate courts, rather than review under the substantial evidence rule, which rule was applied in this case.

Amicus curiae believes the views they seek to present to this Court will contribute to a proper resolution of the troublesome issues before this Court and for the benefit of the voters for whom they seek to assure and guarantee not only a just and fair determination with respect to the election at issue, but also the preservation of their fundamental rights of suffrage under the Constitution of the United States.

WHEREFORE, the Alviso Ad Hoc Committee respectfully requests this court to permit them to file the brief *amicus curiae* as described herein.

Respectfully submitted,

DELIZONNA, BOURHIS & BOURHIS,
By HARRY J. DELIZONNA &
RAY L. BOURHIS,
Attorneys for Amicus Curiae

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AFFIDAVIT OF SERVICE

HARRY J. DELIZONNA, being first duly sworn, under oath, deposes and says:

1. That on the 25th day of January, 1974, three copies of the Motion of Alviso Ad Hoc Committee, *Amicus Curiae*, in Support of Petition for a Writ of Certiorari were mailed, postage prepaid, to:

CITY OF ALIVISO
FABER L. JOHNSTON, ESQ.
First National Bank Building, No. 711
San Jose, California 95113

CITY OF SAN JOSE
PETER G. STONE, ESQ.
City Attorney's Office
151 West Mission Street
San Jose, California 95110
JESUS CANALES, et al.

STEPHEN V. MANLEY, ESQ.
Community Legal Services
330 North Market Street
San Jose, California 95110

2. That all parties required to be served have been served.

Subscribed and sworn to before me this 25th day of January, 1974, at San Jose, California.

.....

HARRY J. DELIZONNA

Subscribed and sworn to before me this 25th day of January, 1974, at San Jose, California.

.....

NOTARY PUBLIC